

**04-0259 V.D. v. Robertson Concrete Issued: 5/2/05**

Robertson Concrete and its workers compensation insurance carrier, Workers Compensation Fund (referred to jointly as "Robertson"), ask the Utah Labor Commission to review Administrative Law Judge Lima's award of benefits to V. D. under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Ann.).

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12 and Utah Code Ann. §34A-2-801(3).

**ISSUES PRESENTED**

In its motion for review, Robertson argues that Judge Lima erred in determining that V. D. is entitled to a preliminary finding of permanent total disability. However, before considering the issues raised in Robertson's motion for review, the Labor Commission must first determine whether the motion for review was filed within the 30 day time limit imposed by the Utah Administrative Procedures Act ("UAPA"; Title 63, Chapter 46b, Utah Code Ann.).

**FINDINGS OF FACT**

Judge Lima issued her decision in this matter on March 15, 2005. That same day, a copy of her decision was mailed to Robertson at the correct mailing addresses. On April 15, 2005, the Labor Commission received Robertson's motion for review.

**DISCUSSION AND CONCLUSIONS OF LAW**

Section 63-46b-12 of UAPA allows a party dissatisfied with an ALJ's decision 30 days in which to file a motion for review with the Labor Commission. A motion for review is not "filed" until it is actually received by the Labor Commission.

In this case, Judge Lima's decision was issued on March 15, 2005, but Robertson's motion for review was not received until 31 days later, on April 15, 2005. Consequently, Robertson failed to file its motion for review within the 30 day period allowed by law.

**ORDER**

The Labor Commission dismisses Robertson's motion for review as untimely. The prior decision of the ALJ remains in effect. This matter is remanded to the Adjudication Division for such additional proceedings as are necessary to complete the adjudication of Mr. D.'s claim. It is so ordered.

Dated this 2<sup>nd</sup> day of May, 2005.

R. Lee Ellertson, Commissioner